IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4928 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

P B RAVAL

Versus

DIRECTOR, STOCK HOLDING CENTRAL MEDICAL STORES ORGN.

Appearance:

MR KB PUJARA for Petitioner

M/S MG DOSHIT & CO for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 07/02/97

ORAL JUDGEMENT

This petition under Article 226 of the Constitution challenges the action of the respondent in orally terminating the services of the petitioner on July 15, 1985. It is further prayed that the respondents be directed to treat the petitioner as a permanent employee with effect from the date of his joining service i.e. March 15, 1983 and to pay the petitioner all the

consequential benefits upon declaration of permanency.

In response to the notice issued by this Court, in the year 1985, the respondents had appeared and stated through their learned counsel that the services of the petitioner were never terminated by respondent no.1 and that if the petitioner wanted service, he should approach respondent no.1 immediately and the respondent no.1 would pass necessary order.

The petition was called out for hearing today. Mr.Pujara, learned Counsel for the petitioner stated that pursuant to the aforesaid statement recorded before the Court, the petitioner was given appointment as a driver in respondent no.1 organization and that the petitioner has been continued in service.

It is thus clear that prayer (a) no longer survives because it was stated on behalf of the respondents at the admission stage that the respondents had never terminated the services of the petitioner.The respondents on their own have also given petitioner appointment in the concerned organization.

As far as prayer (b) is concerned, respondents have not filed any affidavit to controvert the averments made by the petitioner on oath. According to the petitioner he was appointed in service by an order dated April 5, 1983 for the period from March 15, 1983. According to the learned counsel for the petitioner, the petitioner was continued in employment by renewing his appointment on 29 days basis by giving him artificial breaks in service; and the petitioner was thus, continued in service for a period of more than two years from March 15, 1983 till July 5, 1985 continuously and without any break except the artificial breaks as stated above. The petitioner has been driving the car of respondent no.1 for the last about 14 years. According to the petitioner, the work assigned to the petitioner is of a permanent nature and the services were continuously required in the past and even now the petitioner's services are required. Learned Counsel for the petitioner has strongly relied upon the judgment of this Court in Special Civil Application No.711 of 1985, decided on July 3, 1985 holding that the procedure of giving such artificial breaks was illegal. It is further submitted that the petitioner is now aged 45 years and he is not eligible for getting any public employment.

In view of the contents of the appointment orders, which are produced on record, it appears that the

petitioner was appointed on ad hoc temporary basis till selection of a candidate by the Departmental Selection Committee through Employment Exchange. The respondents have not cared to file any affidavit-in-reply either to controvert the averments made in the petition or to point out whether the respondents have made any appointment on regular basis by this time. Looking to the nature of appointment, it would not be possible for this Court to direct the respondents to grant the petitioner status of permanency, but nonetheless as the petitioner is in continuous service since March 3, 1983 and the petitioner has already put in continuous service of almost 14 years barring the artificial breaks as stated above, and in view of the aforesaid judgment of this Court in Special Civil Application No.711 of 1985 deprecating the practice of giving artificial breaks,the respondents are at least required to be directed to consider the petitioner's service as continuous from March 15, 1983 and to grant him consequential benefits on that basis in accordance with law.

In view of the aforesaid discussion the respondents are directed to treat the petitioner in continuous service with effect from March 15, 1983. The respondents are further directed to pay the petitioner the benefits which may be payable to him in accordance with law on the basis that the petitioner is in continuous service with effect from March 15, 1983. Such benefits shall be computed within a period of two months from the date of receipt of a certified copy of this judgment or the writ of this Court and the payment of the amount, if any, shall be made within three months from the above date.

Rule is made absolute to the aforesaid extent with no order as to costs.

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